IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

CARLOS DELUNA   §
                    Petitioner   §
                                       §
V.   §   CIVIL ACTION NO. C-86-234
                                       §
JAMES A. LYNAUGH, DIRECTOR,   §
TEXAS DEPARTMENT OF   §
CORRECTIONS,   §
                    Respondent   §

RESPONDENT'S MOTION TO EXPEDITE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES James A. Lynaugh, Director, Texas Department of
Corrections, Respondent herein, hereinafter "the state," by and
through his attorney, the Attorney General of Texas, and files
this his Motion to Expedite. In support thereof, the state would
show the Court the following:

I.

This habeas corpus petition was filed by Petitioner,
hereinafter "DeLuna," a Texas death-sentenced inmate, on or about
October 10, 1986. The state filed its motion for summary
judgment on or about November 10, 1986, and the court ordered
DeLuna to respond to the motion in an order dated December 12,
1986. On or about January 22, 1987, DeLuna filed his response.

II.

Besides asking that the state's motion for summary judgment
be denied, DeLuna's attorney also requested a "reasonable" amount
of time to gather statistics in support of his claim that the
death penalty in Texas is applied in a discriminatory manner, to

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consult with DeLuna to obtain additional facts in support of his claim of ineffective assistance of counsel, and to review the record to attempt to find support for his claim that counsel on appeal had rendered ineffective assistance.

III.

On April 22, 1987, the Supreme Court announced its decision in McCleskey v. Kemp, ___ U.S. ___, 107 S.Ct. 1756 (1987). The Court held that statistical studies are inadequate to show that the death penalty is applied discriminatorily in violation of the Equal Protection Clause of the Fourteenth Amendment. Id. at ___, 107 S.Ct. at 1766. The Court also held that the statistics offered in that case did not prove that racial prejudice operated in the Georgia capital-punishment system in a "constitutionally unacceptable" manner in violation of the Eighth Amendment. Id. at ___, 107 S.Ct. at 1777-78. Although cognizant of the fact that there are imperfections in any criminal justice system, the Court noted that "our consistent rule has been that constitutional guarantees are met when 'the mode [for determining guilt or punishment] itself has been surrounded with safeguards to make it as fair as possible.'" Id. at ___, 107 S.Ct. at 1778, quoting Singer v. United States, 380 U.S. 24, 35, 85 S.Ct. 783, 790 (1965) (bracketed material in McCleskey). Among the safeguards that helped to insure fairness in the Georgia system were a bifurcated proceeding, a threshold requirement of at least one aggravating circumstance, and mandatory review by the highest appellate court in the state. McCleskey v. Kemp, ___ U.S. at ___ n. 37, 107 S.Ct. at 1778-79 n. 37. The Texas capital-sentencing

statute contains identical protections. Thus, any statistical proffer that DeLuna might attempt to make would be irrelevant to his claim.

III.

It has now been over one year since DeLuna's attorney asked for additional time to gather the necessary facts to file an amended or supplemental petition. Surely that has been sufficient time for consultation with DeLuna and reviewing the record to prepare the new pleadings. If DeLuna has any legitimate constitutional claims that would invalidate his conviction, allowing him any further time before amending his petition merely delays his chance of obtaining relief. On the other hand, if his contentions are without merit, the needless delay prevents the state from carrying out its lawful sentence.

WHEREFORE, PREMISES CONSIDERED, the state respectfully requests that DeLuna be directed to file an amended petition for writ of habeas corpus within thirty days, raising every issue of which he is aware under pain of waiver, and that the date be given twenty days to file a response. The state further respectfully requests that after the additional pleadings are filed the court expedite consideration of the petition to the extent that its docket permits.

Respectfully submitted,

JIM MATTOX
Attorney General of Texas

MARY F. KELLER
First Assistant
  Attorney General

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LOU MCCREARY
Executive Assistant
  Attorney General

MICHAEL P. HODGE
Assistant Attorney General
Chief, Enforcement Division

_____
WILLIAM C. ZAPALAC
Assistant Attorney General
Southern District ID # 8615
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Austin, Texas   78711
(512) 463-2080

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I, William C. Zapalac, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing Respondent's Motion to Expedite has been served by placing same in the United States Mail, postage prepaid, on this the _____ day of February, 1988, addressed to: Mr. Richard A. Anderson, Attorney at Law, Bank of Dallas Building, 3333 Lee Parkway, Suite 930 LB-3, Dallas, Texas 75219.

_____
WILLIAM C. ZAPALAC
Assistant Attorney General

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ORDER

Be it remembered that on this _____ day of _____,
1988, came on to be heard Respondent's Motion to Expedite, and
the Court after considering the pleadings of the parties filed
herein, is of the opinion that the following order should issue:

It is hereby ORDERED, ADJUDGED and DECREED that Respondent's
Motion to Expedite be, and it is hereby GRANTED. Petitioner
shall file an amended petition for writ of habeas corpus, if he
desires to do so, within thirty (30) days of the date of this
order, raising all claims of which he is aware under pain of
waiver. The state shall file any response it desires within
twenty (20) days after the amended petition is filed.

SIGNED on this the _____ day of _____, 1988, at
_____, Texas.

                              _____
                              UNITED STATES DISTRICT JUDGE